

APPEAL NO. 93402

A contested case hearing was held in (city), Texas, on February 16, 1993, and April 6, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable heart attack while in the course and scope of his employment, that the claimant gave timely notice of the injury, and that the claimant had disability. Accordingly, benefits were awarded under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Appellant (carrier) appeals urging that the decision is against the great weight and preponderance of the evidence, that it is contrary to the provisions of the 1989 Act, and that there are errors in the statement of the evidence, the findings of fact, and the conclusions of law. Claimant asserts that the hearing officer's Decision and Order are correct in all respects and asks that the decision be upheld.

DECISION

Finding that there is sufficient evidence in the record to support the findings, conclusions, and decision of the hearing officer, we affirm.

The Decision and Order of the hearing officer fairly and adequately set forth the pertinent evidence in the case in sufficient detail. We adopt his statement of evidence for purposes of this request for review. Succinctly, the claimant was the operations manager of a radio station. On March 26, 1992, he had been told to advise the news director, Mr. Y, to perform a particular duty. Mr. Y, who had been abrasive on previous occasions, "got into a fit," became enraged and engaged in a verbal altercation with the claimant. Because Mr. Y was so "hot" the claimant told Mr. Y to go into the general manager's office (Mr. R) with him. The loud, abusive, profane language continued in Mr. R's office. The claimant stated the action of Mr. Y "upset me greatly" and that he began to feel very strange physically. He testified that the pain started getting worse but that he did not say anything to Mr. R, but subsequently left Mr. R's office and went to his own. He felt tingling in his chest and arm and laid down on his table at which time the pain abated somewhat. Shortly thereafter his wife came into his office and they left and stopped at a convenience store near by. His pains became severe and he told his wife to take him to the hospital immediately. They stopped at his doctor's office some five minutes away and he was told to go immediately to the emergency room next door. He collapsed in the emergency room, went into cardiac arrest and was subsequently revived after suffering a serious heart attack. The claimant testified that (Dr. W) told him not to expect to work for about a year and that he had not been able to. Because of his progress, he did seek employment beginning in February 1993 and on March 26, 1993, he was told he could return to work.

An affidavit from Mr. R dated December 8, 1992, provides as follows:

During [claimant's] first week out of the hospital in April 1992, I telephoned him at his home. In that telephone conversation, he told me that his heart attack had begun at [the radio station] during an altercation with [Mr. Y]. [Claimant] also

told me in that telephone conversation that he believed his heart attack had been set off by the emotional stress of that altercation with [Mr. Y].

In a letter also dated December 8, 1992, Mr. R stated that "I certainly remember your being extremely upset after the confrontation with [Mr. Y]. In fact, that is why I asked you to sit down for a while in the office. The anxiety you endured was quite evident." Mr. R also indicated that someone else also remembers being told that "you felt the heart attack coming on during the stress of the incident."

Statements from three doctors who had treated the claimant were admitted into evidence. Dr. W, a cardiologist, states that the claimant became his patient in late March 1992 "after experiencing an acute anterolateral wall myocardial infarction on 03/26/92." His November 10, 1992, letter report goes on to state:

Prior to the patient's presentation with an acute myocardial infarction, he did not have antecedent symptoms of angina, dyspnea on exertion or other symptoms which would warn the patient of chronic coronary disease. He had performed regular strenuous exercise without limitation. He did not have the other major risk factors for atherosclerotic coronary disease in that he does not have a history of high blood pressure or high cholesterol, has not been a smoker, is not diabetic, has no extensive family history of coronary disease and has adhered to a high fiber, low fat diet.

In the absence of signs or symptoms of antecedent chronic coronary disease, it is my conclusion that the acute psychological stress which the patient encountered was likely the trigger for the cascade of events which we well know causes acute myocardial infarction including coronary vasospasm, plaque rupture and coronary thrombosis. The preponderance (sic) of medical evidence indicates that the patient's infarction was precipitated by the stressful, psychological stimulus in the confrontation at work rather than as a natural progression of chronic underlying and pre-existent coronary artery disease and that it was a substantial contributing factor to the patient's myocardial infarction and the complications which ensued including ventricular fibrillation arrest, congestive heart failure, left ventricular thrombus and aspiration pneumonia.

(Dr. G), the claimant's former family doctor, stated in a November 1992 statement that:

With the absence of a previous cardiac history of symptoms or signs, I must believe that the myocardial infarction was triggered by the sudden extremely emotional stimulus at work. I would concur with [Dr. W's] opinion in light of [claimant's] having no known pre-existing heart disease.

(Dr. C), the claimant's primary care physician since September 23, 1992, after reviewing some medical history concerning the claimant, stated in a November 20, 1992, statement that:

In view of the preponderance of medical evidence, I concur with the opinion of [Dr. W], the patient's cardiologist that likely the sudden emotional stimulus of the confrontation, rather than the natural progression of preexisting cardiac condition or disease, was a substantial contributing factor of the MI.

The carrier presented portions of the claimant's medical records that indicate the claimant did have some risks factors associated with coronary disease. Some information was disputed by the claimant, e.g., in response to a report that claimant was a smoker, he testified he had quit in 1979; regarding a notation about a history of high cholesterol, the claimant stated his cholesterol had not been checked any time prior to his heart attack; and, in reference to a family history of early coronary disease, the claimant responded that his mother was still alive at 89 and that his father died at 74 apparently of heart problems. Other matters from the claimant's medical records introduced by the carrier included a notation that the claimant's heart size was the upper limits of normal without evidence of effusion or infiltrate and that a cardiac catheterization revealed "interapical hypokinesis and high grade stenosis of the mid-LAD." Carrier presented no witnesses nor other medical evidence other than that mentioned above. During the first session of the hearing, the carrier was granted a continuance because of its assertion that the claimant's doctor's reports referred to above "are entirely different, they contradict previous one and we're at a disadvantage," and that they will want to obtain new medicals.

The three issues presented for resolution were whether the claimant sustained a compensable injury on March 26, 1992, whether he reported his injury to his employer not later than 30 days and whether he had disability. As indicated, the hearing officer resolved all the issues in the claimant's favor. We have reviewed the complete record and find there is sufficient evidence to support the hearing officer's determinations. While there was some conflict in the medical evidence regarding the claimant's potential cardiac risk factors, this was a matter for the hearing officer, as fact finder, to resolve. Bullard v. Universal Underwriters Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). The claimant's testimony if believed by the hearing officer, which it apparently was, is sufficient, with the exception of medical evidence required by Article 8308-4.15(2), to support his findings. See Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.- Eastland 1980, no writ); Texas Employers Insurance Association v. Thompson 610 S.W.2d 208 (Tex. App.-Houston 1981, no writ). Here, however, there was other evidence in support of the testimony of the claimant to establish that the attack occurred at a definite time and place (the whole incident spanned a time frame of approximately 30 minutes), that it was caused by a specific event occurring in the course and scope of employment, and that it was precipitated by a sudden stimulus. The statement of Mr. R and the medical

records provide significant corroboration. Also, the claimant's testimony regarding disability and notice stood virtually un rebutted.

With regard to the requirement for medical evidence, Article 8308-4.15(2) provides:

(2)the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack;

Clearly, there was medical evidence consisting of the claimant's cardiologist who specifically made this comparison or weighing and who was supported by the opinions of two other doctors. There was no other medical evidence which made any comparison or weighing or otherwise outweighed the medical evidence offered by the claimant. The hearing officer considered this evidence and concluded that "[t]he Claimant's work was a substantial contributing factor to his heart attack, as opposed to the natural progression of a preexisting heart condition or disease." There was a sufficient factual and legal basis for his conclusion of law. See Texas Workers' Compensation Commission Appeal No. 92501, decided November 4, 1992, and cases cited therein. Of significance in the instant case is Texas Workers' Compensation Appeal No. 91046, decided December 2, 1991, where we observed that risk factors for heart disease such as family history, gender, smoking, cholesterol, and hypertension were not part of the equation of weighing the employee's work and the natural progression of a preexisting heart condition or disease but that while some could contribute to a preexisting heart condition or disease, they did not, per se, equate to a preexisting condition or disease.

Finding the evidence sufficient to support the hearing officer's decision, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge